

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE ENROLLED ACT No. 416

AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. The boundaries of the assigned service areas of electricity suppliers may not be changed except under any one (1) of the following circumstances:

(1) If a municipality which owns and operates an electric utility system ~~and furnishes~~ **furnishing** retail electric service to the public annexes ~~an~~ area beyond the assigned service area of its municipally owned electric utility, ~~and the ordinance providing for the annexation provides that the annexing city has developed and adopted a fiscal plan and has established a definite policy to furnish the territory to be annexed within a period of three (3) or four (4) years governmental and proprietary services substantially equivalent in standard and scope to the governmental and proprietary services furnished by the annexing city to other areas of the city regardless of topography, patterns of land utilization and population density similar to the territory to be annexed; then the municipally owned electric utility may petition the commission to change the assigned service area of the municipally owned electric utility to include the annexed area, A municipally owned electric utility shall exercise its right to petition the commission to change its assigned service area within~~

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sixty (60) days after annexation becomes final or lose its right under this subdivision. The commission shall rule on the petition of the municipally owned electric utility within ninety (90) days after its filing. If, upon notice and after hearing, the commission decides that it is in the public convenience and necessity for the municipally owned electric utility to render service to the annexed area, it shall order the assigned service area of the municipally owned electric utility to be changed to include the annexed area with the right to serve and immediate possession to the municipally owned electric utility. The commission order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subsection shall not be entitled to a stay of the court order pending appeal. In determining public convenience and necessity, the commission shall give consideration to all relevant matters, including but not limited to the following:

- (A) Preference of owners, occupiers, and consumers in the annexed area.
- (B) Ability of the municipally owned electric utility to render service after the assignment of service area.
- (C) Other utility services to be supplied in the annexed area by the municipality.
- (D) Proximity and capability of the service repair facilities of the electricity suppliers involved.
- (E) Preference of local government officials.

However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1, or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an assigned service area is ordered by the commission, all of the electric utility property of another electricity supplier which is devoted to retail electric service within such additional assigned service area shall be acquired at its then reproduction cost new depreciated value; in addition, the acquiring electricity supplier shall pay severance damages limited to, if applicable, the distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation; or an amount equal to two and one-half (2 1/2) times the previous year's gross electric sales from the newly assigned service area, whichever is greater. If the parties do not agree on the amount the acquiring electricity supplier is to pay, then the commission shall determine said

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amount and order its payment in accordance with this subsection according to the following procedures:

(A) The municipally owned electric utility shall file its petition with the commission not later than sixty (60) days after the annexation becomes effective. The petition must include a certified copy of the annexation ordinance, which serves as conclusive evidence that the area has been lawfully annexed and is part of the municipality. After the filing of a petition under this subdivision, the commission shall promptly enter an order changing the assigned service area facet maps of the municipally owned electric utility and incumbent electricity suppliers to include the annexed area within the assigned service area of the municipally owned electric utility and giving the right to serve and immediate possession to the municipally owned electric utility. The commission order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subdivision is not entitled to a stay of the court order pending appeal. However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1 or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c).

(B) Not later than thirty (30) days after filing a petition under this subdivision, the municipally owned electric utility shall determine for each affected incumbent electricity supplier and pay to that supplier an amount not less than the value of all the electric utility property of the incumbent electricity supplier that is devoted to furnishing retail electric service within the additional assigned service area at its then reproduction cost new depreciated value. In addition, the municipally owned electric utility shall pay the incumbent electricity supplier severance damages in an amount equal to:

(i) the value of the incumbent electricity supplier's distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation or an amount equal to two and one-half (2 1/2) times the incumbent electricity supplier's gross revenues from electricity sales in the annexed area during the twelve (12) month period immediately

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preceding the date the annexation ordinance became effective, whichever is greater; plus

(ii) if additional permanent service locations or service accounts are established in the annexed area during the five (5) year period beginning on the effective date of the annexation ordinance, one-tenth of one cent (\$0.001) for each kilowatt hour of electricity sold to each of those permanent service locations or service accounts for sales that occur during a five (5) year period beginning on the date each service location or service account is established, up to a maximum of one hundred seventy thousand (170,000) kilowatt hours per service account or service location for each monthly billing period.

However, the municipally owned electric utility is not required to pay severance damages under item (ii) if, at the time each annual payment otherwise would accrue, it is purchasing all of its requirements for electric power and energy, except for generation directly provided by the municipally owned electric utility or by a customer, from the incumbent electricity supplier. Severance damages must be paid not later than thirty (30) days after the end of each calendar year in which severance damages have accrued. The municipally owned electric utility and incumbent electricity suppliers shall cooperate to calculate the amount of any severance damages and shall furnish to each other all information and records reasonably necessary for the determination and verification of severance damages. If the municipally owned electric utility and incumbent electricity suppliers cannot agree on the amount of severance damages the municipally owned electric utility is to pay, the commission shall determine the amount and order payment in accordance with this clause. Not later than twenty (20) days after making a payment, the municipally owned electric utility shall certify to the commission and to any affected incumbent electricity supplier that it has paid the amounts required under this clause.

(C) If the municipally owned electric utility fails to make a payment under clause (B), an affected incumbent electricity supplier may, not later than sixty (60) days after the payment is due and after giving the municipally owned electric utility reasonable notice of and an opportunity to

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cure the defect, file with the commission a petition alleging that a payment due under clause (B) has not been made. If the commission finds after notice and hearing that any payments owed to the incumbent electricity supplier have not been timely and fully paid, the commission shall order the municipally owned electric utility to pay:

- (i) the delinquent payments by a date determined by the commission;
- (ii) accrued interest at the rate set forth in IC 24-4.6-1-102; and
- (iii) the incumbent electricity supplier's costs of filing and prosecuting a petition under this clause.

If the commission finds against the incumbent electricity supplier, it shall order the incumbent electricity supplier to pay the costs incurred by the municipally owned electric utility in defending against the incumbent electricity supplier's petition.

(D) A certified copy of a final commission order that:

- (i) determines and orders the payment of severance damages under clause (B); or
- (ii) orders the payment of delinquent payments, interest, and costs under clause (C);

may be filed with the clerk of the circuit or superior court of any county in which part or all of the annexed area is located. A commission order that is filed in a court under this clause may be enforced and executed in the same manner as if it were a final judgment of that court.

(2) Upon mutual agreement of the affected electricity suppliers and approval of the commission. If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located and an affected electricity customer does not request a hearing within twenty (20) days of the last date of publication, the commission may approve the change without a hearing. The commission shall approve a boundary line change under this subdivision unless the commission finds, after a public hearing, that the change would cause:

- (A) duplication of electric utility facilities;
- (B) waste of materials or resources; or
- (C) uneconomic, inefficient, or inadequate electric service to the public.



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(3) In the case where a landowner owns a single tract of land ~~which that~~ is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers ~~which~~ are housed in a single structure or ~~which~~ constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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